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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Avitech, Inc.

File: B-223203.2

Date: March 27, 1987

DIGEST

Contracting agency failed to conduct meaningful discussions with offeror under brand name or equal request for proposals for hydraulic test stands where agency failed to advise offeror that its proposal was seriously deficient due to lack of detailed parts data.

DECISION

Avitech, Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N68836-86-R-0009, issued by the Navy on a brand name or equal basis for two hydraulic test stands. We sustain the protest based on our finding that the Navy failed to conduct meaningful discussions with Avitech.

The hydraulic test stands called for by the RFP consist of two items, each to be priced separately by the offeror: a hydraulic pumping and instrument console, ACL-FILCO part No. 9770-0069 or equal; and a drive and dynamometer, ACL-FILCO part No. 9770-0070 or equal. For each item, section C of the RFP contained "general specifications" describing the equipment in narrative form, and "essential salient characteristics" describing the component parts and their design or performance characteristics. The "general specifications" provisions for both items (sections C-2 and C-4) contained a subheading, "related publications," which simply cited "technical orders" consisting of operations and maintenance instructions and an illustrated parts breakdown of the brand name items; the RFP made no other reference to the technical orders.

Initial proposals were submitted by six offerors by the February 24, 1986 due date. Three of the offerors ultimately were included in the competitive range (ACL-FILCO, Paul-Munroe Engineering, and Avitech). Avitech offered its own

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models 1602 and 1603 as equal to the brand name models. Its initial proposal consisted of a 12-page narrative which in essence repeated the "essential salient characteristics" listed in the RFP and four drawings of its proposed equipment.

The Navy's initial evaluation found the Avitech proposal technically unacceptable because it merely reiterated the salient characteristics in the RFP and failed to provide sufficient data, such as a bill of materials or parts list, to enable it to determine if its product was equal to the brand name product. The technical evaluation also identified two specific features listed in the narrative portion of Avitech's proposal which deviated from the salient characteristics in the RFP; the deviations related to the equipment's reservoir capacity and fluid flow and return design.

Despite the deficiencies identified in the technical evaluation, the contracting officer decided to include Avitech in the competitive range. On May 2, the contracting officer orally advised Avitech of one of the two specific deviations found by the technical evaluation, the fluid flow and return design; Avitech agreed to change its proposal to conform to the RFP. There is no indication that the contracting officer notified Avitech of the other deficiencies in its proposal. Avitech then submitted a best and final offer by the May 16 due date.

The contracting officer subsequently reopened discussions under the RFP.^{1/} According to the Navy, in a conversation with Avitech on July 11, the contracting officer again advised Avitech to correct the fluid flow and return problem which had been discussed previously and, apparently for the first time, raised the question concerning the Avitech model's reservoir capacity which had been identified in the initial technical evaluation of the Avitech proposal. Again, no mention was made of Avitech's lack of detailed information.

^{1/} After reviewing Avitech's first best and final offer, the Navy concluded that Avitech had failed to correct the defect regarding the fluid flow and return design. Avitech disagreed and filed a protest with our Office. Avitech subsequently agreed to withdraw the protest based on the Navy's agreement to reopen discussions.

Amendment No. 4 to the RFP then was issued requesting a second round of best and final offers by July 28. The amendment also provided that copies of the "technical orders" cited in the original RFP were being furnished to the offerors "[t]o further clarify the Government's requirement" for the test stands. The amendment also stated:

"Attention is directed to Section L-5 Brand Name or Equal clause, specifically paragraphs L-5(c)(1), (2), and (3).

"Section M-3 added: Evaluation for Award

"Evaluation of offers will be made on the proposals, including the information required by Section L-5, to determine equality to the NSN [national stock number] and the brand name specified."

Section L-5 of the RFP in pertinent part advised offerors of their responsibility to furnish all descriptive material required to determine if a product offered as equal to the brand name models meets the salient characteristics in the RFP.

The date for submission of second best and final offers was extended to August 8 by amendment No. 5. In a letter dated July 25 transmitting that amendment, the Navy directed Avitech's attention to the two problem areas in its proposal which already had been raised by the Navy, the reservoir capacity and the fluid flow and return design. With regard to the technical orders cited in the RFP, the letter stated only:

"The Technical Orders and Illustrated Parts Breakdown (IPB) referenced in the solicitation are being provided to further clarify the Government's requirement."

The letter made no reference to Avitech's lack of detailed information.

After review of the second best and final offers, the Navy made award to ACL-FILCO on October 30. By letter dated November 4, the Navy advised Avitech, the lowest priced offeror, that its proposal had been found technically unacceptable. The letter stressed the importance of demonstrating that the equipment parts offered were equal to the brand name parts, and stated that Avitech's proposal

contained insufficient data for that determination. The Navy also noted that Avitech's proposal did not refer to the technical orders cited in the RFP or identify the components of its equipment by manufacturer or model number. The letter did not mention either of the two specific problems which had been discussed with Avitech (the reservoir capacity and fluid flow and return design), and there is no indication that Avitech failed to correct those two deficiencies in its second best and final offer. Avitech then filed its protest with our Office on November 13.

Avitech argues that its proposal adequately demonstrated compliance with the salient characteristics in the RFP. Avitech concedes that it did not provide detailed information on the parts that make up its proposed stand equivalent to the data in the technical orders cited in the RFP,^{2/} but maintains that the technical orders were not part of the salient characteristics its product was required to meet. Further, Avitech states that the Navy never advised it during discussions that its proposal was defective on grounds that it contained insufficient data for determining the Avitech product's equivalence to the brand name models.^{3/} We find that the Navy acted improperly by failing to advise Avitech that its proposal was seriously defective due to its lack of detail.

As a preliminary matter, the Navy argues that the offerors were on notice that the technical orders were part of the salient characteristics once amendment No. 4 was issued. As discussed above, however, that amendment merely stated that copies of the technical orders were being furnished to the offeror "to further clarify" the Navy's requirements. While the amendment also called the offerors' attention to the requirement that they submit adequate information to determine if a product offered as equal to the brand name met the salient characteristics, nothing in the RFP or any of the amendments specifically linked the technical orders to the

^{2/} The technical orders contain a comprehensive breakdown of all the parts and components making up the items. There are nearly 1000 parts listed.

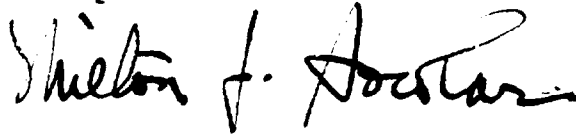
^{3/} In its comments on the Navy report, Avitech also argues that it was improperly induced to submit an offer under the RFP since only the brand name models available exclusively from ACL-FILCO could satisfy the Navy's requirements. This issue is untimely since it concerns an alleged impropriety apparent on the face of the RFP, and was not raised before the date for receipt of proposals as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986).

salient characteristics. Further, we do not think that it was reasonable for the agency to assume an offeror would provide such an extremely detailed list of parts and components without being specifically requested to do so. Thus, we do not believe that the RFP reasonably could be interpreted to require a parts breakdown equivalent in detail to the lists provided in the Navy's technical orders.

Further, the Navy never advised Avitech during discussions that its failure to provide detailed parts information made its proposal technically unacceptable. The record shows that during the lengthy negotiations process, the Navy discussed only two specific defects in Avitech's proposal--the reservoir capacity and the fluid flow and drain design--even though it was clear beginning with the Navy's first technical evaluation that the lack of a detailed parts list was a serious deficiency in the Avitech proposal.

In order for discussions in a negotiated procurement to be meaningful, contracting officials must furnish information to all offerors in the competitive range as to areas in which their proposals are believed to be deficient so that offerors are given an opportunity to revise their proposals to fully satisfy the government's requirements. See Federal Acquisition Regulation, 48 C.F.R. § 15.610(c)(2) (1986); E. H. Pechan & Associates, Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278. Here, the Navy failed to conduct meaningful discussions with Avitech since it did not notify Avitech of the central weakness in its proposal. Price Waterhouse, B-222562, Aug. 18, 1986, 86-2 CPD ¶ 190. We therefore sustain the protest and are recommending that the Navy reopen discussions with Avitech, clarifying the degree of detail required in the proposal, including the list of equipment components, and giving Avitech an opportunity to submit a revised proposal. If, after evaluating the revised proposal, the Navy determines that Avitech is in line for award, the contract with ACL-FILCO should be terminated for convenience and award made to Avitech.^{4/}

The protest is sustained.


for Comptroller General
of the United States

^{4/} The Navy suspended performance by ACL-FILCO while the protest was pending, even though the protest was not filed in time to trigger the statutory suspension in the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (Supp. III 1985).